

**IN INTEREST ARBITRATION PURSUANT TO SECTION 1111  
OF THE SAN JOSE CITY CHARTER**

In The Matter of Interest Arbitration  
Between

CITY OF SAN JOSE

Employer,

and

SAN JOSE POLICE OFFICERS'  
ASSOCIATION,

Association.

JAMS REF# 1110015524

**STIPULATED AWARD RE: TIER 2  
ARBITRATION BETWEEN CITY OF  
SAN JOSE AND SAN JOSE POLICE  
OFFICERS' ASSOCIATION**

Judicial Arbitration Mediation Services  
(JAMS)

Before John A. Flaherty (Ret.)

Hearing Dates: April 26 and April 29, 2013

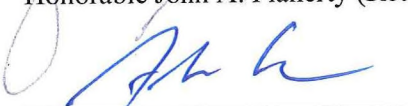
With regard to the scheduled arbitration set to occur on April 26 and April 29, 2013 concerning the dispute over Tier 2 retirement benefits, pursuant to Section 1111 of the San Jose City Charter, the Board of Arbitrators hereby approves and adopts the Joint Proposed Stipulated Award submitted by the City of San Jose and San Jose Police Officers' Association, attached hereto.

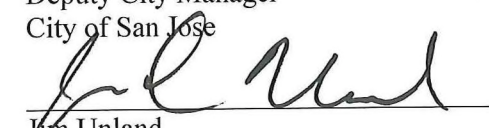
Date: April 26, 2013

Date: April 26, 2013

Date: 4/26/13

  
Honorable John A. Flaherty (Ret.)

  
Alex Gurza  
Deputy City Manager  
City of San Jose

  
Jim Unland  
San Jose Police Officers' Association President

AGREEMENT FOR STIPULATED AWARD

BETWEEN

THE CITY OF SAN JOSE

AND

THE SAN JOSE POLICE OFFICERS ASSOCIATION

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**Second Tier Retirement Benefits**

It is hereby acknowledged that the City of San Jose ("City") and the San Jose Police Officers' Association ("POA") have met and conferred and reached an agreement over a second tier retirement benefit ("Tier 2"). It is also agreed that the San Jose Municipal Code and/or applicable plan documents shall be amended to reflect the terms of this agreement, and that the POA will support and/or not contest any such ministerial actions by the City.

The retirement benefits for employees in Tier 2 are limited to those specifically defined in this agreement and set forth in the City Charter. Tier 2 employees will receive the Tier 1 retiree healthcare benefits, including retiree healthcare survivorship benefits, unless otherwise modified through the meet and confer process.

Effective as soon as possible, the City shall implement a second tier retirement benefit consisting of the terms identified herein. Employees who enter the Police and Fire Department Retirement Plan after the implementation of the second tier will be part of the second tier retirement benefits.

**Pension Formula**

The pension benefit formula for eligible employees shall be 2.0% percent per year of service subject to a maximum of 65% of final compensation.

**Final Compensation**

Final compensation shall mean the average annual earned pay of the highest three (3) consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

**Minimum Service**

Employees shall be eligible for a service retirement after earning ten (10) years of retirement service credit and meeting the age requirement specified below.

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### Retirement Service Credit

Employees shall be eligible for a full year of service credit upon reaching 2,080 hours of regular time worked (including paid leave, but not overtime). The maximum retirement service credit in a calendar year shall not exceed one year. If a Tier 2 member renders less than two thousand eighty hours in a calendar year, the Tier 2 member shall be given credit for that portion of one year which the hours of service rendered by the member in such year bear to two thousand eighty hours of regular time worked (including paid leave and military leave, but not overtime).

### Age

Employees, shall be eligible to retire at age 60 with at least ten (10) years of retirement service credit.

Employees can retire at a minimum of age 50 with at least ten (10) years of retirement service credit; however, the member's benefit shall be reduced so it does not exceed the actuarial value of full retirement. This reduced benefit shall be determined by the Police and Fire Department Retirement Plan's actuary.

### Deferral of Retirement

Employees who leave employment who have at least ten (10) years of retirement service credit may defer the retirement benefit until the employee becomes eligible to retire.

### Cost of Living Adjustment (COLA)

Plan members shall receive a cost of living adjustment limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment shall be prorated based on the number of months retired.

### Disability Retirements

#### *Service Connected*

Plan members who are eligible for a service connected disability retirement benefit shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

#### *Non-Service Connected*

Plan members who are eligible for a non-service connected disability retirement benefit shall receive 2.0% times years of City service, but not less than 20% and not greater than 50% based on the average annual pensionable pay of the



highest three consecutive years of service. Plan members shall not be eligible for a non-service connected disability retirement unless the member has earned 5 years of retirement service credit.

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### **Survivorship Benefits**

#### *Death Before Retirement*

If an employee dies during employment with the City and was not eligible for retirement and had less than two years of service, a return of employee contributions, plus interest, as provided for in the San Jose Municipal Code, shall be returned to the spouse, domestic partner, children or estate.

If an employee dies during employment with the City and was not eligible for retirement and had more than two years of service, the spouse or domestic partner, shall receive the greater of 10% or 2% of the employee's final compensation times years of service to a maximum of 30% of the employee's final compensation. If there is no surviving spouse or domestic partner, the amount that would have been provided to the surviving spouse or domestic partner will be divided among the eligible surviving children. If there are none, the member's estate shall be entitled to receive the Tier 2 member's accumulated contributions on deposit in the retirement fund, plus interest as provided for in the San Jose Municipal Code. After commencement of this benefit, if a spouse or domestic partner receiving benefits dies the benefit shall be divided among eligible surviving children, if any. As an alternative, an eligible survivor could elect to take a return of contributions, plus interest as provided for in the San Jose Municipal Code. If any legal issues arise with providing this alternative, the parties agree to meet and confer.

If an employee dies during employment with the City and was eligible for retirement, a monthly benefit equivalent to what the employee would have received if retired at the time of death shall be provided to the spouse or domestic partner. If there is no surviving spouse or domestic partner, the amount that would have been provided to the surviving spouse or domestic partner will be divided among the eligible surviving children. If there are none, the member's estate shall be entitled to receive the Tier 2 member's accumulated contributions on deposit in the retirement fund, plus interest as provided for in the San Jose Municipal Code. After commencement of this benefit, if a spouse or domestic partner receiving benefits dies the benefit shall be divided among eligible surviving children, if any.

#### *Death Before Retirement - Employees killed in the line of duty*

If an employee is killed in the line of duty, the surviving spouse or domestic partner shall receive a monthly benefit equivalent to a minimum of 50% of the average annual pensionable pay of the highest three consecutive years of service or whatever the employee would have otherwise been eligible for based on years of City service, whichever is higher. If there is no surviving spouse or

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domestic partner, the amount that would have been provided to the surviving spouse or domestic partner will be divided among the eligible surviving children. If there are none, the member's estate shall be entitled to receive the Tier 2 member's accumulated contributions on deposit in the retirement fund, plus interest as provided for in the San Jose Municipal Code. After commencement of this benefit, if a spouse or domestic partner receiving benefits dies the benefit shall be divided among eligible surviving children, if any.

#### *Death After Retirement*

At the time of retirement, an employee may elect to receive a lower pension benefit to provide survivorship benefits to a spouse/domestic partner or child(ren) designated at the time of retirement. The Board's actuary shall determine the pension benefit for a 50%, 75% or 100% continuance that is actuarially equivalent to the member's benefit.

#### **Return of Contributions**

If a Tier 2 employee leaves City Service, as an alternative to receiving a pension benefit, the employee shall have the option of taking a return of the employee's contributions.

#### **Defined Contribution Plan**

Employees may supplement the retirement benefit by electing to make contributions to a defined contribution plan offered by the City, up to the annual IRS limit.

#### **Cost Sharing**

The City and Plan members in Tier 2 shall share equally in all costs of Tier 2 to the pension plan as established by the Police and Fire Department Retirement Plan Board, including, but not limited to administrative expenses, normal cost and unfunded actuarial liability.

#### **Reciprocity**

Employees shall be eligible for reciprocity per the terms of the reciprocal agreement with CalPERS. In no event shall service in a reciprocal agency be used to qualify for an unreduced early retirement.

#### **Redeposit of Contributions**

Employees in Tier 2 who are subject of a layoff by the City of San Jose and received a return of contributions will be eligible to redeposit their contributions within 90 days of a reinstatement or rehire by the City of San Jose.



### IRS Review

Based on information from City tax advisors, the City believes the Second Tier Plan is part of a qualified retirement plan under IRS regulations (along with the First Tier). However, if the IRS determines that the Second Tier Plan does not meet the requirements of a qualified plan, the City and Union agree to meet and confer over plan modifications, which are within the scope of representation, required to obtain a qualified plan determination or private letter ruling from the IRS.

### Purchase of Service Credit

Tier 2 employees will not be eligible for any purchase of service credit, other than for military leave.

### Meet and Confer

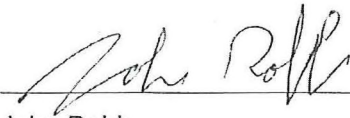
If a court issues a final decision (not subject to appeal) which sets aside the portion of Measure B dealing with second tier retirement benefits, the parties shall immediately begin negotiating over second tier retirement benefits.

*The parties agree that this agreement will be adopted by the arbitration board as its stipulated award. This award will be effective upon execution of the arbitration award and will not be submitted to the City Council for approval or to the POA membership for ratification.*

FOR THE CITY:

FOR THE SJPOA:

 4/25/13  
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Jennifer Schembri Date  
Deputy Director, Employee Relations

 4/25/13  
\_\_\_\_\_  
John Robb Date  
Vice President, SJPOA